

MINISTRIES OF AGRICULTURE AND FORESTRY (RESTRUCTURING) BILL

EXPLANATORY NOTE

General Policy Statement

This Act provides for machinery of government changes concerning the merging of the Ministry of Agriculture and the Ministry of Forestry into a ministry to be called the Ministry of Agriculture and Forestry. Provision is made for the transfer of employees on terms and conditions of employment that are no less favourable than existing ones. The Bill also provides for savings relating to various activities and matters. The Act is to become effective on 1 March 1998.

Clause by Clause Analysis

Clause 1 is the Short Title and commencement provision.

Clause 2 defines the terms “chief executive”, “new Ministry”, “old Ministry”, and “working day”.

Clause 3 abolishes the Ministry of Agriculture and the Ministry of Forestry.

Clause 4 consequentially amends the State Sector Act 1988, the Ombudsmen Act 1975, and the Forests Act 1949.

It should be noted that the new Ministry of Agriculture and Forestry has already been added to the list of departments of the public service in the First Schedule of the State Sector Act 1988 by the State Sector Order 1997 (S.R. 1997/164), which takes effect on 1 March 1998.

Clause 5 is a savings provision, which provides that references to the old Ministries and their chief executives are to be read as references to the new Ministry and its chief executive, and allows for the continuation of proceedings.

Clause 6 is a savings provision in relation to brands, stamps, marks, logos, and other representations and documents in use by the 2 old Ministries.

Clause 7 provides for the transfer of employees from the old Ministries to the new Ministry.

Clause 8 provides that the terms and conditions of employment of transferred employees are to be no less favourable than their previous terms and conditions, and also provides for unexpired collective contracts to continue in force.

Clause 9 provides that no technical redundancy will occur merely by virtue of a person who is transferred to the new Ministry ceasing to be employed by one of the old Ministries.

Clause 10 saves the appointment of transferred statutory officers.

Clause 11 provides that certain officers appointed under the Biosecurity Act 1993 will continue to have the power to enforce Customs Orders which prohibit the importation into New Zealand of goods that constitute risk goods within the meaning of that Act.

Clause 12 requires employees and others to act under the direction of the chief executive of the new Ministry. This provision is required for persons such as SPCA officers who may exercise functions under the new Ministry.

Clause 13 removes the need for the chief executive to constantly update delegations to reflect changes in legislation in those cases where he or she has delegated all functions and powers under a particular enactment.

Clauses 14 to 17 provide a penalty for non-payment or late payment of statutory fees and charges and make other provision in relation to fees and charges.

The clauses are substantially similar to the provisions of section 18 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995, with the addition of a requirement that persons incurring a statutory debt must be notified of the consequences of non-payment or late payment.

Clause 18 provides for the Minister of Agriculture and the Minister of Forestry (who remain separate despite the merger of the 2 Ministries) to appoint advisory and technical committees, and provides for the remuneration of such committees.

Hon Dr Lockwood Smith

**MINISTRIES OF AGRICULTURE AND FORESTRY
(RESTRUCTURING)**

ANALYSIS

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A BILL INTITULED

An Act to provide for the merger of the Ministry of Agriculture and the Ministry of Forestry into the new Ministry of Agriculture and Forestry, and for related matters

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BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Ministries of Agriculture and Forestry (Restructuring) Act 1997.

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(2) This Act comes into force on 1 March 1998.

2. Interpretation—In this Act, unless the context otherwise requires,—

*Ministries of Agriculture and Forestry
(Restructuring)*

“Chief executive” means, subject to any enactment, the chief executive of the Ministry of Agriculture and Forestry or such other chief executive for the time being of a responsible Ministry which has, with the authority of the Prime Minister, assumed responsibility for the relevant function or matter: 5

“New Ministry” means, subject to any enactment, the Ministry of Agriculture and Forestry or such other Ministry as has, with the authority of the Prime Minister, for the time being assumed responsibility for the relevant function or matter: 10

“Old Ministry” means the Ministry of Agriculture or the Ministry of Forestry, as the case may require:

“Working day” means any day except—

(a) A Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and 15

(b) A day in the period commencing with 20 December in any year and ending with 15 January in the following year. 20

3. Abolition of Ministry of Agriculture and Ministry of Forestry—(1) The Ministry of Agriculture is abolished.

(2) The Ministry of Forestry is abolished.

4. Enactments consequentially amended—The enactments specified in the Schedule are amended in the manner indicated in that schedule. 25

Savings

5. Savings relating to references and proceedings—

(1) Unless in any case the context otherwise requires, in any enactment or in any regulations or in any instrument or document— 30

(a) Every reference (whether direct or indirect) to the Director-General of Agriculture is to be read as a reference to the chief executive of the new Ministry:

(b) Every reference (whether direct or indirect) to the Secretary of Forestry is to be read as a reference to the chief executive of the new Ministry: 35

(c) Every reference (whether direct or indirect) to the Ministry of Agriculture is to be read as a reference to the new Ministry: 40

(d) Every reference (whether direct or indirect) to the Ministry of Forestry is to be read as a reference to the new Ministry.

5 (2) References in the Ministry of Agriculture and Fisheries (Restructuring) Act 1995 to the responsible chief executive include, where appropriate and with effect on and after 1 March 1998, references to the chief executive of the new Ministry.

10 (3) All proceedings whatever that, immediately before the commencement of this Act, were pending by or against or which could have been brought by or against or in respect of the Director-General of Agriculture or the Secretary of Forestry (including by virtue of section 6 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995) may be carried on,
15 completed, or enforced by or against or in respect of the chief executive of the new Ministry.

(4) All proceedings whatever that,—

20 (a) Immediately before the commencement of this Act, were pending by or against or which could have been brought by or against or in respect of any person other than the Director-General of Agriculture or the Secretary of Forestry; and

25 (b) Relate to anything done or omitted to be done by or against or in relation to that person in the performance of functions or powers of the Director-General of Agriculture or the Secretary of Forestry or the Director-General of Agriculture and Fisheries, whether as an employee of the relevant Ministry or otherwise,—

30 may be carried on, completed, or enforced by or against or in respect of the chief executive of the new Ministry or such other person as the Attorney-General may certify for the purposes of this section.

6. Savings relating to brands, stamps, marks, etc—

35 Notwithstanding anything in the Flags, Emblems, and Names Protection Act 1981, all names, brands, stamps, logos, emblems, marks, forms, and other representations or documents in use by the Ministry of Agriculture or the Ministry of Forestry immediately before the date of commencement of
40 this Act—

(a) Continue to have effect in relation to anything done before that date; and

- (b) May continue to be used, and have effect, for the purposes of the functions and powers of the new Ministry or the chief executive of the new Ministry.

*Transfer of Employees from Ministries of Agriculture and Forestry
to New Ministry, Etc* 5

7. Transfer of employees—(1) Every person—

- (a) Who is employed in either of the old Ministries immediately before the date of commencement of this Act; and

- (b) Whose transfer to the new Ministry is agreed to by the chief executive (or chief executive designate) of the new Ministry— 10

is deemed to have transferred to the new Ministry on the date of commencement of this Act.

- (2) The transfer of any employee by this section is subject to any relevant provisions of the employment contract applying to that employee. 15

- (3) This section applies notwithstanding section 61A of the State Sector Act 1988.

8. Protection of conditions of employment on transfer—(1) The employment of any person deemed by section 7 to have been transferred to the new Ministry is to be on terms and conditions no less favourable than those that the transferred employee was entitled to receive under the employment contract applying to the employee at the date of transfer. 20
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- (2) Any unexpired collective employment contract which covers employees transferred to the new Ministry is deemed, as from the date of transfer, to continue to apply on the same terms— 30

- (a) As if it were a contract that had been made in respect of the new Ministry; and

- (b) As if it were binding both on those employees and on the chief executive of the new Ministry.

- (3) **Subsections (1) and (2)** cease to apply to a transferred employee if the terms and conditions of employment that apply under the employment contract applying to the employee at the date of the transfer are varied by agreement between the employee and the chief executive of the new Ministry. 35
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(4) **Subsection (1)** ceases to apply to a transferred employee who, after the transfer, receives any subsequent appointment within the new Ministry.

5 **9. No compensation for technical redundancy**—No person who is deemed by **section 7** to have transferred to the new Ministry is entitled to any compensation for redundancy by reason only of the person ceasing to be employed by an old Ministry.

10 **10. Saving of appointments, etc**—The appointment of every statutory officer who is deemed by **section 7** to have transferred to the new Ministry continues until the earliest of the following occurs:

- 15 (a) The term of appointment expires:
- (b) The person ceases employment in the new Ministry:
- (c) The appointment is revoked.

20 **11. Powers of certain inspectors, etc, under Customs Orders**—In addition to the powers and authorities exercisable by an inspector, chief technical officer, or deputy chief technical officer appointed under the Biosecurity Act 1993, every employee of the new Ministry who is appointed under that Act (whether before or after the commencement of this Act) has all such powers and authorities as may be reasonably necessary for the enforcement of any Order in Council made under section 48 of the Customs Act 1966 or section 54 of the
25 Customs and Excise Act 1996 which prohibits the importation into New Zealand of goods that constitute risk goods within the meaning of the Biosecurity Act 1993.

30 **12. Employees, etc, to act under direction of chief executive**—(1) All inspectors, registrars, officers, and employees of the new Ministry must act under the direction of the chief executive of the new Ministry in the exercise and performance of the powers and functions conferred or imposed on them by any enactment administered in the Ministry.

35 (2) The chief executive of the new Ministry has full power and authority to exercise and perform any power or function which is conferred on the Director of any Division of the new Ministry by any enactment administered in the Ministry.

Miscellaneous Provisions

13. Delegation of all chief executive's functions and powers under any enactment—If the chief executive of the new Ministry delegates to an employee of the new Ministry all the chief executive's functions and powers under any enactment, the delegation has effect as a delegation of all the chief executive's powers under the enactment as from time to time in force, whether those powers were conferred on the chief executive by the enactment before or after the delegation was made. 5 10

14. Penalty for failure to pay statutory fees, etc—(1) In this section and in sections 15 to 17, "statutory debt" means any fee, charge, or levy required by any enactment administered in the new Ministry or by any regulation, order, notice, direction, or other instrument made or issued under any such enactment (other than an enactment that provides for the payment of interest or a monetary penalty for late payment of, or failure or refusal to pay, the fee, charge, or levy), to be paid to the Ministry or the holder of any specified office. 15

(2) If, after the expiration of the time provided by the enactment concerned (or by subsection (4)), all or any part of a statutory debt remains unpaid, the debt is deemed to have been increased by an amount calculated in accordance with subsection (3). 20

(3) The amount by which an unpaid statutory debt, or any unpaid part of a statutory debt, is deemed to have been increased is the sum of— 25

(a) 10% of the debt (or that part of the debt that remained unpaid after the expiry of the time provided for the debt's payment); and 30

(b) For every complete period of 6 months after that expiry during which the debt or any part of it (including any deemed increase calculated under this subsection) has remained unpaid, 10% of the debt or that part.

(4) If no time is otherwise provided by any enactment for the payment of statutory debts of any kind or description, the debt must be paid within 20 working days of its being demanded in writing from the person required to pay it by any employee of the new Ministry. 35

(5) When the Ministry notifies a person of the incurring of a statutory debt, it must also notify that person of the consequences of non-payment under this section. 40

(6) This section applies only in respect of statutory debts that first arise after the commencement of this Act.

5 **15. Waiver of penalty**—(1) If the chief executive is satisfied that the failure or refusal of any person to pay all or any part of a statutory debt was a result of a genuine dispute between the person and the Ministry as to—

- (a) The person's liability to pay the debt; or
- (b) The amount of the debt; or
- (c) Both,—

10 the chief executive may waive the payment of all or any part by which the debt has been increased under **section 14**.

(2) If, in any action for the recovery of a statutory debt, the Court is satisfied that the failure or refusal of any person to pay all or any part of a statutory debt was a result of a genuine
15 dispute between the person and the Ministry as to—

- (a) The person's liability to pay the debt; or
- (b) The amount of the debt; or
- (c) Both,—

20 the Court may waive the payment of all or any part by which the debt has been increased under **section 14**.

16. Services may be withdrawn until debt paid—(1) If satisfied that—

- (a) A statutory debt has been correctly calculated; and
- 25 (b) The time provided by the enactment concerned (or by **section 14 (4)**) for the debt's payment has expired; and
- (c) The debt or any part of it has not been paid,—

30 the chief executive may give to the person liable to pay the debt written notice that, unless within 10 working days the person pays the debt or part, or satisfies the chief executive that it is not payable, the chief executive may withdraw, or refuse to provide the person with, service of the kind to which the debt relates.

(2) If—

- 35 (a) Ten or more working days have expired since the chief executive gave any person notice under **subsection (1)**; and

- (b) The person concerned has neither paid the statutory debt or part concerned nor satisfied the chief executive that it is not payable,—

40 the chief executive may, after causing the person to be sent by registered mail or given orally a notice that the chief executive

has decided to do so, withdraw or refuse to provide the service concerned.

(3) If the chief executive has under **subsection (2)** withdrawn or refused to supply a service, the chief executive is not required to reinstate or supply it until—

- (a) A court holds that the debt or part concerned is paid; or
- (b) A court holds that the debt or part is not payable; or
- (c) A court holds that some lesser amount is payable, and the amount is so paid.

17. Levies collected on behalf of other person or body—(1) If—

- (a) The chief executive of the new Ministry is paid a statutory debt that is collected on behalf of and required to be paid to some other person or body; and
- (b) It has been deemed under this section to have been increased,—

then, subject to **subsection (2)**, to the extent that the amount of the increase has been received, it is to be paid to the person or body.

(2) If, pursuant to any enactment administered in the new Ministry, the chief executive collects any levy (however described) and pays it to any person or persons, then, notwithstanding anything to the contrary in the enactment, the chief executive is to deduct from the amounts of levy collected the actual and reasonable costs to the Ministry of the collection of those amounts and the making of payments, and pay only the residue (or, if the amounts collected are payable to more than one person, the appropriate proportion of the residue) to each person concerned.

(3) When paying to any person an amount from which a deduction has been made under **subsection (2)**, the chief executive must give the person—

- (a) Accounts, showing the deductions made and how they have been calculated; and
- (b) An explanation for the making of each deduction.

18. Advisory and technical committees—(1) The Minister of Agriculture and the Minister of Forestry each have power to appoint from time to time advisory or technical committees, and to define the functions of any such committee.

(2) If the responsible Minister so directs, there may be paid out of public money to the members of any such committee

remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act apply accordingly as if the committee were a statutory Board within the meaning of that Act.

*Ministries of Agriculture and Forestry
(Restructuring)*

Section 4

SCHEDULE
ENACTMENTS AMENDED

Enactment	Amendment
1949, No. 19—The Forests Act 1949 (R.S. Vol. 34, p. 569)	<p>By omitting from section 2 (1) the definition of “Ministry”, and substituting the following definition:</p> <p style="padding-left: 2em;">“Ministry” means the Ministry of Agriculture and Forestry or such other Ministry as has, with the authority of the Prime Minister, for the time being assumed responsibility for the relevant function or matter.”.</p> <p>By omitting from section 2 (1) the definition of “Secretary”, and substituting the following definition:</p> <p style="padding-left: 2em;">“Secretary” means the chief executive of the Ministry.”.</p>
1975, No. 9—The Ombudsmen Act (R.S. Vol. 35, p. 469)	<p>By repealing section 9.</p> <p>By omitting from Part I of the First Schedule both the item “The Ministry of Agriculture” (as inserted by section 5 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995) and the item “The Ministry of Forestry” (as inserted by section 32 (1) of the State-Owned Enterprises Act 1986).</p> <p>By inserting in Part I of the First Schedule, after the item “The Maori Trust Office”, the item “The Ministry of Agriculture and Forestry”.</p>
1988, No. 20—The State Sector Act 1988 (R.S. Vol. 33, p. 715)	<p>By omitting from the First Schedule both the item “Ministry of Agriculture” (as substituted by section 5 of the Ministry of Agriculture and Fisheries (Restructuring) Act 1995) and the item “Ministry of Forestry”.</p>